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No. 587

In the

# Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA,

*Appellant,*

*v.*

EVETTS HALEY, JR.,

*Appellee.*

*On Appeal from the United States District Court for the Northern District of Texas*

## MOTION TO SET ASIDE AND VACATE THE ORDER OF THIS COURT ENTERED FEBRUARY 24, 1959, AND APPLICATION FOR AN ORDER PLACING THIS CASE ON THE CALENDAR FOR A HEARING ON THE MERITS.

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The Defendant-Appellee, Evetts Haley, Jr., respectfully moves this Court for an Order Setting Aside the Per Curiam Order of this Court, entered February 24, 1959,

and directing that the case be placed upon the regular Calendar of this Court for a hearing on the merits, and in support of said Motion submits the following:

## FACTS

On the 17th day of October, 1958, after a trial before the United States District Court for the Northern District of Texas, Dallas Division, said Court entered a Judgment that Plaintiff-Appellant, United States of America, take nothing by its suit against the defendant, Evetts Haley Jr. The Appellant, United States of America, gave notice of appeal and filed its Jurisdictional Statement in this Court seeking a review by direct appeal under the provisions of 28 U. S. C. 1252 (JS-1) and requesting summary reversal with remand for further proceedings to determine the questions other than constitutional questions presented. Thereafter, the Appellee duly filed a Statement Opposing Jurisdiction and a Motion to Dismiss or Affirm. Without granting the Appellee a hearing or the opportunity to fully present his case, in oral argument or otherwise, this Court summarily and arbitrarily entered the following Order on February 24, 1959: "PER CURIAM. The Judgment is reversed. *Wickard v. Filburn, 317 U. S. 111.*"

## LAW AND ARGUMENT

**The Summary and Arbitrary Reversal of the District Court's Judgment, Without Granting Appellee Any Hearing on the Merits is an Illegal Usurpation of**

**Authority by This Court in Direct Contravention of the Constitution, Statutes of the United States and This Court's Own Rules.**

The United States took a *direct appeal* in this cause to the United States Supreme Court under the authority of Title 28 U. S. C. 1252. There was no application for Writ of Certiorari where jurisdiction is discretionary with this Court. Appellee has not had the benefit of a full review by an intermediate Appellate Court. His *only* Appellate Review is a review by this Court. Summary reversal upon a direct appeal without a full review shows alarming disposition to open the way to government by men instead of government by law guaranteed by our Constitution. That such was not the intention of Congress in enacting 28 U. S. C. 1252 is evidenced by the dissenting opinion of Mr. JUSTICE DOUGLAS concurred in by Mr. JUSTICE BLACK in *Linehan v. Waterfront Commission of New York Harbor, et al., 347 U. S. 439, 74 S. Ct. 623*, wherein it was written concerning *affirmation* of a District Court Judgment:

> "This case illustrates what I fear is a growing practice of the Court of diluting the Act of Congress which gives us jurisdiction of appeals. 28 U. S. C. §1253 et seq. The Congress carved out a group of cases, of which this is one, that come here as of right and is not dependent, as are petitions for certiorari, on a vote of four Justices out of nine for an adjudication by the Court of the merits of the controversy. In recent years the Court has more and more dismissed or affirmed appeals, with no opportunity of counsel to make oral argument and without any opinion by the Court.

> "If we conclude that the Compact is constitutional, we should give our reasons so that all interests will be protected. Congress expected as much in all but frivolous cases coming here by appeal."

Now these justices, and indeed the entire Court, have been silent in the face of more flagrant facts—*summary reversal* without Appellee's being granted the chance for oral argument and without an opinion *by the Court*. With seventeen points of constitutional law available to sustain the lower Court's decision and an Appeal from the ruling on only one of such points, "The Commerce Clause", the citation of *Wickard v. Filburn (317 U. S. 111)*, governs only one question presented by the record and in no way is authority for reversal without a full hearing of a decision based on different facts and different propositions of law.

**This Court's Order Summarily Reversing the Judgment of the District Court Without a Hearing on the Merits is Illegal and Void Under Rule 16 of the Revised Rules of the Supreme Court of the United States.**

The Court's attention is directed to the provisions of Rule 16 which is applicable to the case at bar. Said Rule contains no authorization for summary reversal of a District Court Judgment before this Court on a Direct Appeal. On the contrary, a careful reading shows that the Rule prohibits such action by the very nature of the Orders provided for therein. Certainly it contemplates determination *only* of the question of *jurisdiction* and the briefs submitted are directed to that question.

In accordance with the provisions of Rule 16, the Appellee moved under subparagraph (a) thereof to dismiss the Government's Appeal as not within the Jurisdiction of the Court and under subparagraph (c) of said Rule to affirm the District Court Judgment on the ground that it was manifest that no substantial federal question was presented.

Subparagraph (4) of Rule 16 reads in part as follows:

> "4. After consideration of the papers distributed pursuant to the foregoing paragraph, the Court will enter an appropriate order. If such order notes probable jurisdiction, or postpones consideration of the question of jurisdiction to the hearing of the case on the merits, the case shall stand for argument."

Study of this Rule shows that in the present state of the record in the case at bar, this Court was authorized to enter only one of the following Orders:

(1) an Order dismissing the Appeal for want of jurisdiction;

(2) an order affirming the Judgment of the District Court on the ground that it was manifest that the questions upon which the decision of the cause depends are so unsubstantial as not to need further argument;

(3) an Order postponing the question of jurisdiction to the hearing on the merits;

(4) an Order noting probable jurisdiction.

Appellee submits that no order, other than those mentioned above, would be an "appropriate order" as required by Rule 16.

Supreme Court Rule 17 confirms Appellee's position, as to what is an "appropriate order" within Rule 16, in the following language: "Within twenty days after the Court has entered an order noting probable jurisdiction or postponing consideration of the question of jurisdiction to the hearing on the merits, * * *."

28 U. S. C. A. 2106 empowers this Court to "reverse any judgment * * * and—remand the cause and direct the entry of such appropriate judgment * * * or require such further proceedings to be had as may be *just* under the circumstances." However, no cases found thereunder appear to give this Court power to summarily reverse on direct appeal where no hearing is afforded nor examination made of the trial court record. It seems obvious that such reversal would not be "just" as required by the Statute. This is strengthened by the general rule that every presumption in favor of the trial court's decision should be indulged.

Clearly from the foregoing Rules and Statutes, if the Court determines that it has jurisdiction, the cause must stand for argument. By reversing the District Court's decision in its Order of February 24, 1959, the Court took jurisdiction of the Appeal. Having noted probable jurisdiction, the case must under Rule 16, "stand for argument" and under Rule 17 the appellant is required to file with the Clerk a designation of the parts of the record the printing of which he thinks necessary for a consideration of the questions presented as set forth in his notice of appeal and his jurisdictional statement.

No authority has been offered to this Court to justify its Summary Reversal Order entered on February 24, 1959. It is true that the United States in its Jurisdictional Statement, prayed "On the authority of *Wickard v. Filburn* and *Maneja v. Waialau Agricultural Co.*", supra, for summary reversal of the district court's judgment. An examination of the cited cases will prove that neither is authority for a summary reversal and no other authority is offered. Historically as this Court is aware governments benign in origin tend to become despotic. It would appear that this Court would resolve every doubt in favor of a citizen opposed by the mighty array of government and provide him a hearing to air his position fully.

Only this Court has power to make Rules concerning the conduct of proceedings before it, and once those Rules are made, the Bar of the Supreme Court must rely on their meaning what they say and that the Court by judicial fiat and usurpation will not enlarge upon or vary the written language. Otherwise, a lawyer can only predict that this Court will do the unpredictable.

The following quotation from Supreme Court Rule 45 is noteworthy:

> "1. The Court looks with disfavor on the submission of cases on briefs, without oral argument, and therefore may, notwithstanding such submission, require oral argument by the parties."

The only "summary" action authorized by the Rules of this Court, other than the dismissal of an appeal of the affirmance of a judgment as provided in Rule 16, is found

in Rule 44(3) providing: "A case will be placed on the summary calendar whenever the court concludes that it is of such a character as not to justify extended argument." Even then a litigant is granted half an hour for argument.

The Appellee has not submitted the case under Rule 45 on the Briefs filed, for by the Order of Summary Reversal this Court has denied Appellee the right to file a full brief in support of the decision and Judgment of the District Court.

Appellee respectfully submits that the issues in the case at bar are of the utmost importance, not only to him as an individual, but also to all the people of the United States. The Constitution alone is the law of the land, and no one decision of this Court can decree the constitutionality of any Congressional Act except with specific reference to the facts presented in the case before it. Every citizen of the United States is entitled, within the rules of established procedure, to have his day in Court, and to have a full hearing and full consideration on the facts and the law of his particular case. Unless the material facts and law are substantially identical with those of a prior case, the decision rendered therein is not conclusive upon the issues presented. To hold otherwise would be an endorsement of the theory of "abstract" law, which theory has been repudiated by this Court and was not contemplated by the draftsmen of the Constitution of the United States.

It is not within the province of this Court to attempt to amend the Constitution of the United States by a strained

construction and "interpretation" of the words used therein. Neither is such an amendment within this Court's power through utilization of the simple expedient of denying a citizen his right to be heard, and by indirection and without expressed reason, summarily overruling and rejecting the well considered opinion of an eminent jurist, who under our established system of jurisprudence has not only the right, but the duty, to strike down any unconstitutional law or application thereof which may come to his attention.

WHEREFORE, Appellee respectfully prays this Court to set aside its Order of February 24, 1959, reversing the Judgment of the District Court entered herein, and for an Order directing that this case be placed on the general calendar of this Court and stand for argument in its assigned order.

Respectfully submitted,

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